

For Punjab National Bank : 1). Mr. D.K. Gupta, Advocate
2). Ms. Garima Gupta, Advocate

Per: Ajay Kumar Vatsavayi, Member(Judicial)

ORDER

The present application is filed by Resolution Professional (RP) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking sanction of resolution plan as approved in the meeting of Committee of Creditors (**CoC**) held on 12.09.2019.

2. It has been submitted that the insolvency petition was filed by the Financial Creditor i.e. Allahabad Bank under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Ganeshom Cereals Pvt. Ltd. (**Corporate Debtor**) and the same was admitted vide order dated 13.12.2018 and the CIRP of the Corporate Debtor was initiated. It is submitted that the Mr. Bhupesh Gupta was appointed as Interim Resolution Professional (**IRP**) vide order dated 19.12.2018 and within three days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Weekend Business Standard, an English newspaper dated 22/23.12.2018 and Business Standard (Hindi) dated 22.12.2018 thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. It is submitted that in pursuance of the public announcement, claims were received from the Financial Creditors which were verified and after collation,

the IRP constituted the CoC as per the provisions of Section 21 of the Code. It is stated that the CoC was constituted with two Financial Creditors i.e. Punjab National Bank and Allahabad Bank. These creditors filed their claims which were approved by the RP, in view of the unamended Regulation 12 of the Regulations and intimation in this regard was given to this Tribunal.

4. It is submitted that the applicant as IRP has also appointed valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these reports as per unamended Regulation 35 which are as follows:-

VALUATION SUMMARY OF ASSETS OF CORPORATE DEBTOR																													
Asset Class	Valuation By	Location	Fair Market Value (₹)	Liquidation Value (₹)	Average Fair Market Value (₹)	Average Liquidation Value (₹)																							
Plant & Machinery	Brahm Pal Bhardwaj	77, Ph-II, Indl Area, Chd	325,000	227,500	327,875	237,782																							
	Alok Kaushik		330,750	248,063			Immovable Property Land & Building	Lalkhan Lal Gupta	77, Ph-II, Indl Area, Chd	76,289,000	64,837,500	73,152,729	62,175,745	Ganesh Chander Mamgai	70,016,458	59,513,989	Financial Assets	Annop Kumar Goyal	77, Ph-II, Indl Area, Chd	1,290,000	290,000	789,728	289,728	Prateek Mittal	289,455	289,455	Total		
Immovable Property Land & Building	Lalkhan Lal Gupta	77, Ph-II, Indl Area, Chd	76,289,000	64,837,500	73,152,729	62,175,745																							
	Ganesh Chander Mamgai		70,016,458	59,513,989			Financial Assets	Annop Kumar Goyal	77, Ph-II, Indl Area, Chd	1,290,000	290,000	789,728	289,728	Prateek Mittal	289,455	289,455	Total					74,270,332	62,703,254						
Financial Assets	Annop Kumar Goyal	77, Ph-II, Indl Area, Chd	1,290,000	290,000	789,728	289,728																							
	Prateek Mittal		289,455	289,455			Total					74,270,332	62,703,254																
Total					74,270,332	62,703,254																							

5. It is stated that the shares of the members of CoC after incorporating all the claims of all creditors is as follows:-

SI No.	Name of Financial Creditor	Claim Amount (In Crores)	Amount as per Books (In Crores)	Amount Admitted (In Crores)	Voting Share % (based on amount admitted)
1	Punjab National Bank, Taraori Branch, Haryana	284.22	-	284.22	55.53
2	Allahabad Bank, SAM Branch, Chandigarh	227.65	147.79	227.65	44.47
	Total	511.87	147.79	511.87	100.00

6. It is stated that in the 1st meeting of the CoC held on 25.01.2019, the CoC resolved to replace Mr. Bhupesh Gupta with the proposed RP i.e. Mr. Vivek Kumar Arora and appointed him as Resolution Professional (RP). It is further submitted that in the 3rd meeting of the CoC held on 16.05.2019, the CoC finalized and approved the Evaluation Matrix Format unanimously and Form G for publication.

7. It is also stated that the Expression of Interest (EOI) has been called from eligible resolution applicants on 18.05.2019 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in 'Financial Express (English)' and Amar Ujala (Hindi).

8. It is further submitted that CoC in its 3rd meeting dated 16.05.2019 resolved and directed the applicant-RP to file an application before the Adjudicating Authority seeking an extension of the CIRP by 90 days. This Tribunal vide its order dated 14.06.2019 was pleased to extend the period of CIRP in respect of Corporate Debtor by 90 days.

9. It is submitted that CoC in 4th meeting was informed that after publication of Form G, EOI have been received from two prospective Resolution Applicants i.e. M/s Devki Retails Private Limited and M/s Prudent ARC Limited. It is further submitted that since no objections to the provisional list of Prospective Resolution Applicants had been received, the same was treated as the final list.

10. It is further stated that M/s Prudent ARC Ltd., one of the prospective Resolution Applicant vide email dated 06.07.2019 informed that since the account of the corporate debtor had been declared fraud by Allahabad Bank, as per RBI Guidelines, they being an ARC cannot acquire such assets. Therefore, only one resolution applicant i.e. M/s Devki Retails Pvt Ltd. remained in contention.

11. It is also submitted that the Resolution Applicant vide letter dated 02.08.2019, requested for extension of time for submitting the Resolution Plan and CoC in its 5th meeting dated 09.08.2019 unanimously allowed the extension of time for submission of Resolution Plan by the Resolution Applicant.

12. It is stated that the resolution plan was opened in front of COC in the 5th meeting dated 09.08.2019 and was further analysed in 6th and 7th meeting of the CoC held on 20.08.2019 and 09.09.2019 respectively.

13. It is submitted in the 8th meeting of CoC held on 12.09.2019, the revised resolution plan after incorporating the suggestions of the Members of

CoC, was presented and got approved by 100% voting in favour of it .Copy of the complete resolution plan is at Annexure 1 of the application.

14. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved.

15. The learned counsel for the RP submitted that as per the Form H (Annexure 18 of the application), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 100 % voting share of the financial creditors in the meeting of the CoC held on 12.09.2019 and therefore, resolution plan submitted by M/s Devki Retails Private Ltd. be approved.

16. We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.

17. The corporate debtor was incorporated on 19.05.1994 and the CIRP proceedings were initiated against the corporate debtor by order delivered on 13.12.2018. The present application is filed for approval of the resolution plan submitted by M/s Devki Retails Ltd. (Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

18. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting

share among them and the position of voting for the resolution plan is as under
(para No.5 of Form H):-

Sl. No.	Name of Creditor	Voting Share (%)	Assent/ Dissent/Abstain
1	Allahabad Bank	44.47	Assent
2	Punjab National Bank	55.53	Assent
	Total	100	Approved

19. The details of stakeholders under the resolution plan given in Para 7 of Form H :-

Name of Creditor	Admitted Amount	Proposed Payment	Waiver %
FINANCIAL CREDITORS			
Punjab National Bank	2,84,22,13,999	7,00,00,000	97.54
Allahabad Bank	2,27,65,62,345	1,00,00,000	99.56
OPERATIONAL CREDITORS			
As per list at para 2.3(b)	34,61,86,807	454	99.99
WORKMEN & EMPLOYEES			
As per list at para 2.3(c)	NIL	NIL	NIL
GOVERNMENT DUES			
Income Tax	4,51,03,179	7,04,906	98.44
CST Payable	1,09,01,948	NIL	-

TDS Payable	13,83,571	NIL	-
EPF Payable	35,488	NIL	-
RELATED PARTIES			
As per para 2.3(b)	-	NIL	-
CIRP COSTS			
As per para 4.3C(i)	-	31,44,746	-
TOTAL	5,52,23,87,337	8,38,50,106	-

Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.

20. The compliance of the resolution plan has been given in Para No. 9 of Amended Form H as follows:-

Section of Code/Reg	Requirement with respect to Resolution Plan	Clause of Resolution Plan	(Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Laid out in the RFRP document	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	As per criteria laid out in RFRP document	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is	Affidavit dated 21.08.2019	Yes

	eligible?		
Section 30(2)	Whether the Resolution Plan:		
	(a) provides for the payment of insolvency resolution process costs?	Clause 4.3C I (Page 41 of Resolution Plan)	Yes
	(b) provides for the payment of the debts of operational creditors?	Clause 4.3C ii (Page 42 of Resolution Plan)	Yes
	(c) provides for the management of the affairs of the Corporate debtor?	Clause 4.3G (Page 53 of Resolution Plan)	Yes
	(d) provides for the implementation and supervision of the resolution plan?	Clause 4.3H (Page 53 of Resolution Plan)	Yes
	(e) contravenes any of the provisions of the law for the time being in force?	Clause IV Declaration (Page 53 of Resolution Plan)	No

Section 30(4)	Whether the Resolution Plan		
	(a) is feasible and viable, according to the CoC?	Recorded in the minutes of 8th CoC meeting	Yes
	(b) has been approved by the CoC with 66% voting share?	Yes, With 100% voting Share through E-voting.	Yes

Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clauses 4.3G&H (Page 53of Resolution Plan)	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	No such transaction discovered/determined. Corporate Debtor was not in operation from 4-5 years.	Yes
Regulation 38 (1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?]	Clause 4.3C ii (Page 42 of Resolution Plan) Payment to OCs shall be made within period on 15 days from the date of demand.	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 4.3C (pages 41-48) of the Resolution Plan	Yes

Regulation 38(1B)	(i) Whether the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any resolution plan	Resolution Applicant's statement at page 34 of the Resolution Plan	No
-------------------	---	--	----

	approved under the Code.		
	(ii) If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?]	Resolution Applicant's statement at page 34 of the Resolution Plan	NA
Regulation 38(2)	Whether the Resolution Plan provides:		
	(a) the term of the plan and its implementation schedule?	Clause 4.3B i (page 40) of the Resolution Plan	Yes
	(b) for the management and control of the business of the corporate debtor during its term?	Clauses 4.3G (page 53) of the Resolution Plan	Yes
	(c) adequate means for supervising its implementation?	Clause 4.3H (page 53) of Resolution Plan	Yes
38(3)	Whether the resolution plan demonstrates that –		
	(a) it addresses the cause of default?		Yes
	(b) it is feasible and viable?		Yes
	(c) it has provisions for its effective implementation?		Yes
	(d) it has provisions for approvals required and the timeline for the same?		Yes
	(e) the resolution applicant has the capability to implement the resolution plan?	Clause 4.3F (page 53) of the Resolution Plan	Yes

39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	No such application filed	NA
86[Reg 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.]	Clause 4.3B ii (page 40) of the Resolution Plan	Yes

21. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading as follows:-

If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

22. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

23. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

24. The provisions of Section 30(2) of the Code are as follows:-

The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

- (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;*
- (d) the implementation and supervision of the resolution plan;*
- (e) does not contravene any of the provisions of the law for the time being in force;*
- (f) confirms to such other requirements as may be specified by the Board.*

25. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

(a) **Section 30(2)(a):** The resolution plan (page 67 of the application and Clause 4.3C i. of the Resolution Plan) states that payment of insolvency resolution process cost estimated to be ₹31,44,746/- shall be paid in full and in priority, before payment of any liability, within 30 days from the date of approval of resolution plan by the Adjudicating Authority.

(b) **Section 30(2)(b):** The resolution plan (Page 68 of the application and Clause 4.3C ii of the Resolution Plan) states that there are two financial creditors namely Punjab National Bank & Allahabad Bank. The resolution plan proposes payment of ₹7,00,00,000/- against the admitted amount of ₹2,84,22,13,999/- and payment of ₹1,00,00,000/- against the admitted amount of ₹2,27,65,62,345/-. It is also stated that there is proposal of higher payment to Punjab National Bank because their debt is secured by available assets whereas the debt of Allahabad bank has no available security, hence it is assessed that in the event of liquidation, no amount shall be payable to the Allahabad Bank. There is a

provision of ₹454 against the admitted amount of ₹34,61,86,807 in the case of operational creditors. It is submitted that all the outstanding amount towards the Operational Creditors are older than 3 years and no claims have been filed by any of the Operational Creditors and it is assessed that no amount is likely to be payable to them in the event of Liquidation. There is also proposed sum payable of ₹7,04,906 against the income tax liability of ₹4,51,03,179. There is NIL proposed payment in the Resolution Plan towards the CST payable of ₹1,09,01,948 , TDS Payable of ₹13,83,571 and EPF Payable of ₹35,488 as Government dues. It is stated that no claims have been filed by these authorities claiming their dues and also submitted that no sum is payable towards all these Government dues in the case of Liquidation.

(c) **Section 30(2)(c):** In Clause 4.3 G of the resolution plan (page 79 of the application), it is stated that the management and control of the business of the Corporate Debtor during the term of the resolution plan will be with the Resolution Applicant. It is also stated that that the erstwhile Board of Directors shall have been dissolved immediately on the approval of this resolution plan by the Adjudicating Authority.

(d) **Section 30(2)(d):** In Clause 4.3 H of the Resolution Plan (Page 79 of the application), it is stated that the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Resolution Professional for the entire period of its implementation.

(e) **Section 30(2) (e):** In Clause IV of the Resolution Plan (Page No.31 of the application), it is stated that the resolution plan does not contravene any of the provisions of the law for the time being in force.

26. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. The resolution plan states that the supervision of the resolution plan as finally approved by the Adjudicating Authority is proposed to be done by the Resolution Professional for the entire period of its implementation. It is also stated that in case any violation of any terms of the resolution plan by the Resolution Applicant or the Corporate Debtor is observed, the relevant provisions of the Code dealing with such violations shall be invoked. The Total investment proposed in the Resolution Plan is ₹8,38,50,106/-. The period of the Resolution Plan shall start from the date of approval of Resolution Plan by the Adjudicating Authority and end on the completion of three months.

27. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para 4 of Form H the RP has certified that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The RP has also certified that Mr. Ashok Kumar Goyal, Director of the resolution applicant M/s Devki Retails Pvt Ltd. submitted affidavit dated 21.08.2019 pursuant to Section 30(1) of the Code confirming their eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made there under and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

28. We shall now discuss the requirements of Regulation 39(4) of the Regulations. In Part D of the Resolution Plan (Page No. 66 of application), it is mentioned that the resolution applicant shall furnish a performance guarantee by way of upfront payment of ₹2 Crores. As per the requirement of performance security, a Confirmation of Deposit Certificate for a sum of ₹2 crores with Punjab National Bank is found attached with Diary No. 1907 dated 11.03.2020 as Annexure A1. The RP should ensure that the performance security is received as per the decision of the CoC.

29. It is also stated that the Resolution Professional have formed an opinion that no transaction has been discovered or determined in the case of the Corporate Debtor under Sections 43,45,50 and 66 of the Code (Diary No. 1907 dated 11.03.2020).

30. In view of the above discussion, the resolution plan submitted by M/s Devki Retails Private Limited as approved by the CoC under Section 30 (4) of the Code is hereby approved subject to comments in para No. 28 regarding performance security. The resolution plan so approved shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

31. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 19.12.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No. 813/2019 is disposed of.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

May 18th, 2020
Yashpal